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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,884	03/30/2004	Charles C. Romaniuk	P-007	2883

26477 7590 03/29/2007
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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/708,884	ROMANIUK, CHARLES C.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6 and 9-23 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,9-14 and 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/30/04</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 16, 13, 14, 16, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Sagel et al (D436,861).

In regard to claim 12, Sagel et al discloses a "chip-type snack product" (Sagel et al refers to "food chips" which is of substantially uniform thickness comprising a uniform shape (e.g., circular) and further comprising at least one at least pre-selected portion of said uniform shape which is excluded (which language is construed to indicate a hole or opening in the chip, but which also could be construed as being a recess or depression in the chip) and wherein the pre-selected portion is "finger-sized" (which is construed to mean that the portion is of a size that corresponds to the size of at least some portion of a finger of any sized finger. Clearly figure 5 shows chips with holes wherein the holes, relative to the chips and the rod, are such that the holes would be of a size to equal a portion or a whole of some finger. In regard to claim 16, which recites that the pre-selected portion approximates the size of a human adult fingertip, and claim 17, which recites that the pre-selected portion is the approximate size of the diameter of a human adult finger, both of which are highly variable, Sagel et al is considered to inherently meet these recitations. In regard to claim 19, which recites a generic method of forming the chip-type product with a portion excluded, Sagel et al inherently would have had to anticipate the method claimed to produce the products shown in the figure.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sagel et al in view of Deiglmeier (4,736,840), Cinquina (6,629,600), Baltzley (1,935,308), DeCanto (4,325,556), Grusin (5,040,681), and Xu (5,947,011).

Claims 9-11 and 18 recite at least one dimension (either linear or area) for the hole/pre-selected portion. Since Sagel et al discloses food chips and since the relationship of the holes to the chips appear to be at least 1:3 linearly, it would appear that the chips of the Sagel et al disclosure would meet the claimed recitations. In any case, the dimensions are seen to have been an obvious matter of choice and/or design and an obvious result effective variable as well. Sagel et al clearly teaches the holes are sized to accept an element. As disclosed, applicant dimensions the holes to allow the chips to be manipulated by a finger or portion of a finger. As evidenced by Deiglmeier, Cinquina, Baltzley, DeCanto et al, Grusin and Xu, it was notoriously conventional to provide articles with holes or recessed portions, which are sized to correspond with fingers or portions of fingers, so that the articles can be manipulated. To modify Sagel et al and employ an appropriate size for finger manipulation, if indeed not already inherent in Sagel et al, would therefore have been obvious.

Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sagel et al.

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In regard to claims 20-23, which recite conventional generic ways to provide an "excluded" portion, that is, by molding or removing, the particular conventional way one chooses to provide the final product is seen to have been an obvious matter of choice. Obviously applicant is not the first to cut out a preformed portion of an article or extrude an article with a hole therein.

The remainder of the references cited on the PTO892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
2/28/07

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER
3/28/07